

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ASHLEY LEBRON,

**COMPLAINT AND
JURY DEMAND**

Plaintiff,

Case No. 16-cv-4666

-against-

EDWIN ELPIDIO ENCARNACION,

Defendant,
-----X

ASHLEY LEBRON (hereinafter referred to as “LEBRON” or “Plaintiff”), by her attorney, Robert Hiltzik, Esq., complaining of EDWIN ELPIDIO ENCARNACION (hereinafter referred to as “ENCARNACION” or “Defendant”), and for cause of action would respectfully

PRELIMINARY STATEMENT

1. This is an action in which LEBRON seeks relief for the ENCARNACION’s transmission of sexually contagious diseases upon LEBRON. LEBRON seeks compensatory and punitive damages, an award of costs, interest and attorney’s fees, and such other and further relief as this Court deems just and proper.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter under 28 U.S.C. § 1332. There is complete diversity of citizenship between LEBRON and ENCARNACION and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

3. Venue is proper in the Eastern District of New York under 28 U.S.C. §§ 1391(b)(3) as LEBRON resides in this judicial district.

JURY DEMAND

4. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, LEBRON demands a trial by jury as to all issues triable by jury, as enumerated and set forth in more detail in this Complaint.

PARTIES

5. ASHLEY LEBRON is an individual and citizen of the United States of America. She resides in Nassau County, New York.

6. Upon information and belief, EDWIN ELPIDIO ENCARNACION is an individual and citizen of the Dominican Republic and he is not a citizen of the United States of America. ENCARNACION, upon information and belief, is not a permanent resident alien in the United States. ENCARNACION, upon information and belief, is not domiciled in, nor is he a citizen or resident of the State of New York.

STATEMENT OF FACTS

7. LEBRON and ENCARNACION first met approximately three years ago, in 2013. Their families knew each other, ENCARNACION having grown up in the Dominican Republic across the street from LEBRON'S Aunt, Isabel Pool, also known as "Chave". Miguel Cabrera, the stepson of the cousin of LEBRON'S mother, Fanny Echeverria, has been a good friend of ENCARNACION'S since they were teenagers. As such, LEBRON'S mother's family has known ENCARNACION for many years. Recently, ENCARNACION'S father, Elpidio Encarnacion, has been working with LEBRON'S cousin, MIGUEL, who is an aspiring baseball player in the Dominican Republic. ENCARNACION would often help.

8. On or about August 20, 2013, LEBRON, her mother Fanny, her Aunt Chave and LEBRON's friend, Gabby, attended the baseball game at Yankee Stadium, located in the Bronx,

New York City. That day the New York Yankees were playing against the Toronto Blue Jays. ENCARNACION had been contacted by Fanny and Chave earlier in the week and ENCARNACION provided them with four tickets. At the conclusion of the game, at the invitation of ENCARNACION, the four women met ENCARNACION in the "Family Room" in Yankee Stadium. That was the first time LEBRON had met ENCARNACION.

9. At that meeting LEBRON and her party took pictures with ENCARNACION. After that first encounter, ENCARNACION and LEBRON had no further exchanges until June, 2015.

10. On Monday, June 15, 2015, LEBRON texted ENCARNACION to see if he could get her tickets for that night's game of the Blue Jays against the Yankees. As the weather was becoming threatening, they agreed to save the tickets for another day. ENCARNACION had already provided LEBRON'S FATHER with tickets.

11. Soon thereafter, ENCARNACION began "following" LEBRON on Instagram. On September 9, 2015, LEBRON texted ENCARNACION to see if he could get her tickets to the Blue Jays-Yankee game scheduled for Saturday, September 12. ENCARNACION did leave 7 tickets for LEBRON at the "will call window". ENCARNACION asked LEBRON who she was going to the game with and LEBRON responded that she would be going with her girlfriends. He asked LEBRON to send him pictures of her friends that were going with her. ENCARNACION asked if her girlfriends had Instagram and LEBRON provided him with their usernames so he could "follow" them. ENCARNACION started "following" LEBRON'S friend Alexis on Instagram.

12. On the day of the game on June 16, ENCARNACION sent texts to LEBRON before the game and between the games of what was a double-header that day. LEBRON and

her friends leave at the beginning of the second game as it began to rain. She texted ENCARNACION to let him know and asks if he wants to meet after the game. ENCARNACION responds “yes”, as “the guys” want to go out. LEBRON suggests a place called “Cavo”.

13. After the game, ENCARNACION and LEBRON speak by telephone, with ENCARNACION informing that it is too late and he is too tired to go out. Later that night he texts her that he wants to introduce her to one of his teammates, hereinafter referred to as the “Teammate”. September 13, LEBRON and the Teammate start texting each other.

14. ENCARNACION and LEBRON continued to communicate via “Facetime” and texts on their cellphones. On September 20, 2015, the Teammate invited LEBRON to Baltimore to join him as the Blue Jays were starting a series with the Baltimore Orioles on September 28, 2015. The Teammate tells LEBRON that ENCARNACION wants her to bring “someone he might like” to Baltimore with her.

15. On September 22, 2015, ENCARNACION and LEBRON text each other about the Baltimore trip. ENCARNACION wants to know who she is bringing with her and requests that she bring someone who is not family “para hacer el coro”, Spanish for someone that he “can have fun with”.

16. The Teammate made the lodging arrangements for LEBRON and one of her friends to come to Baltimore and stay at the Four Seasons Hotel, paid for by, upon information and belief, ENCARNACION. LEBRON and her friend drove to Baltimore on September 27, 2015, and stayed in an adjoining/connected room to that occupied by ENCARNACION for the next three nights. That night, ENCARNACION invites LEBRON and LEBRON’S friend to his room, where they find the Teammate and a person identified as ENCARNACION’S “masseur”,

hereinafter referred to as the “Masseuse”. At some point that first evening they were all joined by two stewardesses invited by ENCARNACION. That night all of the persons mentioned sat around drinking tequila supplied by ENCARNACION. Everyone was also smoking marijuana except for ENCARNACION.

17. Later that evening LEBRON and her friend get up to go to their room and the Teammate invites LEBRON to his room to “watch tv”. LEBRON and the Teammate then go to his room where they watch television. Soon they start “necking” and eventually have protected sex. LEBRON falls asleep in the Teammate’s room. The next morning she leaves and returns to her room.

18. Later that day, LEBRON, her friend and the Teammate have lunch in LEBRON’S room. LEBRON and her friend go to the night game in Baltimore of the Blue Jays v. the Baltimore Orioles, gaining entrance with tickets left by the Teammate at the “will call window”. After the game, the Teammate texts LEBRON to smoke some marijuana with him “real quick”, with one of his “boys”, another teammate. Soon thereafter, the Teammate and the other teammate arrive in LEBRON’s room where they, along with her friend, drink Hennessy and smoke marijuana. Later the four of them go to ENCARNACION’S room where they find ENCARNACION getting a massage from the Masseuse. ENCARNACION offers massages to LEBRON and her friend and they accept.

19. Later LEBRON and her friend leave and return to their room. Soon thereafter the Teammate texts LEBRON and eventually LEBRON joins the Teammate in his room. They watch television and have protected sex, LEBRON staying the night.

20. The following day the baseball game was cancelled due to rain. The Masseuse comes into LEBRON’S room and they hang out for a little while. Eventually the three of them

go to a local pharmacy and get some snacks and some cream for ENCARNACION. The Masseuse gives LEBRON'S friend a neck massage while LEBRON watches a movie on his iPad. Later that night the Teammate came to LEBRON'S room. There, along with LEBRON'S friend, the three of them drink Hennessy and order room service. The Teammate gives LEBRON a chocolate he claims is a "weed chocolate" and she eats it. Later, after the chocolate has made her very "high", the Teammate brings her to his room where they smoke marijuana via a "weed pen" and have protected sex.

21. The following day LEBRON and her friend get ready to drive home to New York. ENCARNACION meets LEBRON and he invites her to his annual after-season Party that he throws in the Dominican Republic, adding that she can invite a friend if she likes. LEBRON ends up not attending the Party. After leaving Baltimore, the Teammate and ENCARNACION continue exchanging texts with LEBRON.

22. On December 10, 2015, LEBRON went to a local Planned Parenthood Clinic and had herself tested for Sexually Transmitted Diseases because she had been experiencing certain issues. She is diagnosed as having bacterial vaginosis but otherwise is negative for any sexually transmitted diseases, including Chlamydia.

23. In February, ENCARNACION invited LEBRON to come to the Dominican Republic. LEBRON accepted the invitation and informed ENCARNACION she would be staying with her Aunt Chave in La Romana. He purchased her round trip plane tickets – arriving February 12, leaving February 15 - and on February 12, 2016, LEBRON arrived in Punta Cana, Dominican Republic, and goes to Chave's house. ENCARNACION'S house was about ten minutes from LEBRON'S Aunt's home.

24. Upon arrival LEBRON contacted ENCARNACION via “WhatsApp”, a cell phone messaging app. ENCARNACION invited LEBRON to his house. That evening LEBRON went to ENCARNACION’S house, driven there by her cousin Miguel and accompanied by her cousin, CHARLIN. The armed guards at the house escorted LEBRON and Charlin into the house. That evening ENCARNACION takes LEBRON and Charlin to a basketball game in Salida. After the game ENCARNACION takes them to a club called “Marinelli’s” where they begin drinking. They leave the club about 3:00 a.m. and return to ENCARNACION’S home. After playing pool and drinking some more, LEBRON asks the location of the bathroom. ENCARNACION escorts her to the bathroom in a different part of the house. There ENCARNACION attempts to kiss LEBRON, but LEBRON pushes him away and tells him to “stop”. After the bathroom stop, ENCARNACION brings LEBRON back to the others who were in the house. Before LEBRON leaves that evening, ENCARNACION invites her to join him tomorrow to go “four-wheeling”. He informs her that he will send his driver to pick LEBRON and her cousin up in the morning.

25. The next day, February 13, 2015, ENCARNACION’S driver picks up LEBRON and Charlin and takes them to ENCARNACION’S house. Already there are ENCARNACION’S mother, his brother Richard, brother’s wife Belkys, another couple and another baseball player and his wife. After LEBRON arrives they all go to the “four-wheeling” vehicles, already at ENCARNACION’S house. Some of the vehicles seat four, others seat only two.

26. ENCARNACION invites LEBRON into his two-seater. They drive around the local town and then go into the “woods”. After four-wheeling, they go to a horse ranch identified as “Finca”. There they ate lunch and took naps. Afterwards they returned to ENCARNACION’S house.

27. At ENCARNACION'S house, his guests are in his Jacuzzi. LEBRON asks if she can shower, and requests the use of his washing machine so that she can clean her clothes, not having a second set, her clothes dirty from the four-wheeling. ENCARNACION escorts her to the shower located in another building – his “guest house”. Once outside the bathroom where the shower is, ENCARNACION again tries to kiss LEBRON but is, again, rebuffed, and asked to “stop”. ENCARNACION leaves, and LEBRON showers. After cleaning up, LEBRON, having hand-washed her bathing suit, puts the suit back on while her clothes are being washed and dried, and joins the rest of the guests by the Jacuzzi.

28. As LEBRON wants to change into clothes, and her dirty clothes are not ready, ENCARNACION agrees to have his driver take LEBRON and Charlin back to her Aunt's house, which he does. Later that evening, LEBRON'S cousin Miguel drives LEBRON and Charlin back to ENCARNACION'S house, where his other guests have remained.

29. Later that evening LEBRON, Miguel, ENCARNACION and ENCARNACION'S guests go back to the club Marinelli's where they drink and dance, drinking alcohol in excess. ENCARNACION informs LEBRON that he has “weed” at his home and that they should go back there. Upon information and belief, by then ENCARNACION is aware that LEBRON has had too much to drink and that her judgment is impaired. ENCARNACION has his driver take him and LEBRON back to his home. At the home, ENCARNACION and LEBRON drink champagne and ENCARNACION shares a joint with LEBRON. Later that night they have unprotected sex. ENCARNACION claimed he did not have any condoms at the time. LEBRON was on birth control at the time.

30. The next morning, February 14, 2016, LEBRON showers and ENCARNACION has his brother drive LEBRON back to her Aunt's house. ENCARNACION informed LEBRON

that he was going to watch his son play baseball in Santiago, and that he would return the following day. LEBRON spends the day with her family. LEBRON later learns that ENCARNACION had spent the day with his girlfriend, Karen Yapoort. At no time did ENCARNACION ever inform LEBRON that he had a girlfriend at this time. The girlfriend later posted in Instagram a picture of her four-wheeling, wearing the same four-wheeling helmet LEBRON had worn and sitting in the same vehicle LEBRON had been in.

31. The next morning, February 15, 2016, ENCARNACION had left LEBRON a message inviting her to Finca, but by the time she saw the message he had already gone. Later, ENCARNACION invited LEBRON to come over to his house. LEBRON goes over to ENCARNACION'S house. There they have dinner, drinks and watch television. ENCARNACION brings LEBRON to his bedroom and they have unprotected sex, and LEBRON spends the night. In the morning, ENCARNACION has his driver bring LEBRON back to her Aunt's house. That morning ENCARNACION changes LEBRON'S flight to the next day, February 16, instead of her leaving that day.

32. Later in the day ENCARNACION invites LEBRON and some of her family to come over for some soup. LEBRON goes with her cousin Elizabeth. They eat soup, drink beer and listen to music. Elizabeth eventually is driven home by ENCARNACION'S driver and LEBRON stays. LEBRON informs ENCARNACION of what occurred with his Teammate back in September. ENCARNACION advises that they cannot tell the Teammate what they did together that week. Later that evening ENCARNACION and LEBRON have unprotected sex. LEBRON goes back to her Aunt's house later that night.

33. The next day, February 16, LEBRON is driven to the Punta Cana airport and arrives at JFK airport about 5:00 p.m., where she is picked up by her mother. By that time

LEBRON feels weak, and is experiencing severe headaches and body aches, symptoms that she first started feeling on the plane. She has the “chills” and feels like she has a high fever. When she arrives home in Elmont, she takes Advil and tries to sleep.

34. The next day, February 18, 2016, LEBRON awakens with many of the same symptoms she had the day before. When she urinates that morning she feels a sharp stinging pain. Her genital area is very sensitive and hurts to the touch. She notices a good deal of small “bumps” in the same area. She showers and puts antibiotic ointment on her genital area, then goes with her family to a wake for her Uncle Steve’s mother. At the wake, LEBRON’S symptoms intensify, LEBRON feeling faint. She and her mother leave the wake and go to the emergency room at Long Island Jewish Hospital (“LIJ”). At this moment LEBRON fears that she has contracted the Zika virus, a virus that has been well-publicized by this time.

35. At LIJ, LEBRON is put on IV and a pap smear is taken. An examination reveals that she has genital blisters on both sides of her genitals. She is told by healthcare professionals at LIJ that her problem is a virus or a urinary tract infection and she is prescribed medication and she is sent home. Before leaving the hospital LEBRON “facetimes” ENCARNACION and informs him of how sick she is, relating to him that it might be the flu. That same evening, after having no communication from the Teammate for several months, the Teammate messages LEBRON. She does not respond until the following day.

36. Once home, the fever begins to slowly subside. The next day, February 19, 2016, LEBRON is scheduled to work on a film. LEBRON continues to experience pain when she urinates, her fever is getting worse and she is feeling weak. She works on the film, but her symptoms are getting worse, a sore throat now added. She completes her work on the film and goes home to rest. The following day, Saturday, February 20, 2016, LEBRON, still suffering

from the same symptoms, stays home and tries to rest. The symptoms seem to get progressively worse.

37. On Monday, February 22, 2016, LEBRON is taken to Winthrop Hospital (“Winthrop”) by her mother. At Winthrop LEBRON is informed that her symptoms indicate she may have genital herpes. There she is prescribed Valtrex. At Winthrop she is asked questions about her sexual activity and they inform that she most likely contracted herpes from her last partner, which was ENCARNACION. Later that week she is informed by both LIJ and Winthrop that she also has Chlamydia.

38. That same day, February 22, LEBRON informs ENCARNACION of her diagnosis of genital herpes. She asks him to call her. ENCARNACION texts that she should “check well” as he did not “give her anything”. He also informs her that he just broke up with his last partner. LEBRON asks ENCARNACION to get checked. He responds that he is “clean” and she should not “blame him”. He then claims that she may have picked up the virus when they went “four wheeling” and she swam in the river. Eventually ENCARNACION agrees to get tested and states that he will. He claims that he only had sexual relations with one other girl and had not had any sexual relations for at least one month prior to having sex with LEBRON. He then states that he had just got himself “checked”.

39. On February 26, 2016, LEBRON messages ENCARNACION that he also gave her Chlamydia. ENCARNACION tells LEBRON that he has “papers” that he is “clean”. LEBRON asks ENCARNACION if he got the results back from his being tested. ENCARNACION states that his girlfriend checked with her doctor and that she is “clean as well”. When LEBRON again asks him about his tests he ignores her questions. He finally tells her that he did not get the results back yet. After that they did not communicate for a while.

40. Since February, 2016, LEBRON has been taking Valtrex twice every day. She had to stop because she could no longer afford it and had to wait for her healthcare insurance to start. She has suffered through a total of 5 painful outbreaks of herpes symptoms over the last 6 months, and has been informed by healthcare professionals that this disease will be forever with her, and that she will suffer through the symptoms periodically for the rest of her life. At the time LEBRON had sexual relations with ENCARNACION she was 23 years old. Upon information and belief, ENCARNACION was 33 years old at the time, ten years older than LEBRON.

41. Upon information and belief, at the time of the first sexual encounter with LEBRON, ENCARNACION had already been sexually active with several partners. Upon information and belief ENCARNACION was aware at the time that he had the herpes virus and Chlamydia. Upon information and belief LEBRON contracted Herpes and Chlamydia from ENCARNACION as a result of their physical and sexual encounters of unprotected sex in February, 2016.

THE SEXUALLY TRANSMITTED DISEASES

HERPES

42. Herpes is a non-curable sexually transmitted disease which causes great discomfort in the genital area. Herpes is a virus and resides in or near the spinal column when outbreaks are not experienced. Shortly before an outbreak, the herpes virus travels down the nerve to the genitalia.

Herpes is also known to complicate child-birth and often leads to birth defects.

43. LEBRON will be forced to seek and pay for medical care for this disease for the rest of her life. LEBRON will incur additional expenses and medical care when she decides to

have children. LEBRON will be forced to take medication for the rest of her life. Additionally, LEBRON will be forced to disclose her disease to future partners.

44. LEBRON'S disclosure of her condition will severely limit her ability to develop romantic relationships in the future.

45. LEBRON must also live with the discomfort it present each day and the humiliation embarrassment it causes for the rest of her life.

46. LEBRON has sustained her injury as a direct result of ENCARNACION'S disregard for her safety and well-being. Upon information and belief ENCARNACION had genital herpes prior to participating in sexual relations with LEBRON but he did not disclose that fact to her. LEBRON reasonably and justifiably relied upon the trust and confidence ENCARNACION had built with her through their extensive history together. As a result of their special relationship, LEBRON reasonably relied upon ENCARNACION'S representations and his duty to inform her of his conditions as well as any possibility he might have been exposed to herpes or Chlamydia. The above notwithstanding, ENCARNACION had a duty to inform LEBRON of his conditions as well as any possibility he might have been exposed to herpes or Chlamydia or any other virus and diseases that he could transmit to her and otherwise expose her to, all prior to having any physical contact with her.

CHLAMYDIA

47. Chlamydia is a curable sexually transmitted disease and is a bacterial infection. Men infected with Chlamydia have symptoms including: a burning sensation while urinating, a discharge from the penis; and sometimes painful or swollen testicles while women infected have symptoms including: abnormal vaginal discharge and a burning sensation while urinating.

48. Chlamydia can cause serious, permanent damage to a woman's reproductive system, making it difficult or impossible for her to get pregnant later in life. Chlamydia can also cause a potentially fatal ectopic pregnancy. Additionally, a pregnant woman with Chlamydia can pass the infection to her baby during pregnancy causing an eye infection or pneumonia in the newborn. Having Chlamydia can also make it more likely to deliver a baby too early, resulting in premature birth.

49. LEBRON will be forced to seek and pay for medical care for this disease. LEBRON will incur additional expenses and medical care when she decides to have children. LEBRON will be forced to take medication as a result of the disease.

50. LEBRON has sustained her injury as a direct result of ENCARNACION's disregard for her safety and well-being. Upon information and belief ENCARNACION had Chlamydia prior to participating in sexual relations with LEBRON but he did not disclose that fact to her. LEBRON reasonably and justifiably relied upon the trust and confidence ENCARNACION had built with her through their extensive history together. As a result of their special relationship, LEBRON reasonably relied upon ENCARNACION'S representations and his duty to inform her of his conditions.

51. Although curable, the emotional and physical cost of the infection can never be fully cured.

CAUSES OF ACTION

FIRST CLAIM: BATTERY

52. The LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

53. ENCARNACION acted intentionally and deliberately made contact with the person of LEBRON. Such contact caused bodily injury to LEBRON. Moreover, the contact, given the circumstances, was highly offensive.

54. ENCARNACION knew, or reasonably should have known, that LEBRON, if informed of ENCARNACION'S condition, including without limitation that he was exposed to and/or was carrying the diseases of herpes and Chlamydia, would regard said contact as highly offensive.

55. The actions of ENCARNACION were willful, intentional and unwarranted, and without any just cause or provocation.

56. To the extent LEBRON consented to the contact, such contact was obtained by fraud and was not the result of informed consent. To the extent ENCARNACION had consent for the contact, such consent was obtained by his knowing and/or intentional failure to disclose relevant facts and information to LEBRON.

57. As a result of the wrongful contact, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

58. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

**SECOND CLAIM: NEGLIGENT TRANSMISSION OF SEXUALLY
TRANSMITTED DISEASES**

59. The LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

60. ENCARNACION had a duty to disclose that he was infected with the herpes virus and/or was exposed or could have been to same. ENCARNACION had a duty to disclose that he was infected with Chlamydia and/or that he was exposed or could have been exposed to same.

61. ENCARNACION had the duty to disclose that he may have been carrying sexually transmitted diseases, including without limitation herpes and Chlamydia.

62. ENCARNACION had the duty to reasonably avoid risk of harm or injury to LEBRON. ENCARNACION'S risk of harm or injury to LEBRON was foreseeable. ENCARNACION breached those duties.

63. As a proximate result of ENCARNACION'S breach of duty, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

64. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

THIRD CLAIM: MISREPRESENTATION OF FACTS

65. The LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

66. ENCARNACION made multiple representation to LEBRON that were false. These representations included the statement that he did not have sexually transmitted diseases and/or that he had been exposed to same. Such representations were material and false at the time they were made. ENCARNACION knew these representations were false at the time they were made. Alternatively, ENCARNACION made the representation recklessly, as a positive assertion, without knowledge of the truth. ENCARNACION made the representations with the

intent to deceive LEBRON for his own benefit of having sexual relations with LEBRON.

LEBRON reasonably relied on these statements and representations, believing them to be true.

67. As a result of LEBRON's reliance on the representations, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

68. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

FOURTH: BREACH OF FIDUCIARY DUTY

69. The LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

70. LEBRON and ENCARNACION had a confidential and a fiduciary relationship. The confidential/fiduciary relationship was built with reasonably-placed trust and confidence.

71. ENCARNACION breached his fiduciary duty with LEBRON by failing to be open and honest about his condition and the possibilities that he may have been exposed to sexually transmitted diseases such as herpes and Chlamydia. ENCARNACION'S breach of the fiduciary duty resulted in injury and damages to LEBRON.

72. As a result of LEBRON's reliance on the representations, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

73. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

FIFTH CLAIM: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

74. LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

75. ENCARNACION'S conduct was careless and negligent as to the emotional health of LEBRON, and caused severe emotional distress to LEBRON. The acts and conduct of ENCARNACION was the direct and proximate cause of injury and damage to LEBRON.

76. As a result of LEBRON's reliance on the representations, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

77. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

SIXTH CLAIM: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

78. LEBRON realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

79. At all relevant times ENCARNACION knew or reasonably should have known and had reason to know that he was either carrying sexually transmitted diseases such as herpes and Chlamydia or that there was a reasonably good chance that he had been exposed to same. ENCARNACION failed to inform and advise LEBRON of this information. This conduct by ENCARNACION was extreme and outrageous and beyond the bounds of decency tolerated in this society.

80. As a result of the intentional wrongful acts and neglect of ENCARNACION, LEBRON has suffered and will continue to suffer physical, psychological and economic injuries and damage and endure great pain and suffering.

81. The amount of damages sought in this action exceeds the jurisdictional limits of this Court.

DAMAGES

82. LEBRON is requesting actual damages, special damages, mental anguish and punitive damages.

83. These damages including past and future medical care, mental anguish in the past and future, physical disfigurement in the past and future and all other damages she is entitled to under the law.

84. LEBRON is entitled to punitive damages as ENCARNACION'S actions were, *inter alia*, wanton and malicious.

85. Many elements of damage, including pain, suffering, and mental anguish, in the past and future, past and future physical impairment, and past and future physical disfigurement, cannot be determined with mathematical precision.

86. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury.

87. LEBRON does not seek at this time any certain amount of damages for any of these particular elements of damage, but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate her. However, so as to include in this pleading an amount in controversy, LEBRON specifically pleads that she believes she is entitled to more than \$1.5 million, plus punitive damages in excess of \$10 million.

88. LEBRON reserves the right to either file a trial amendment or an amended pleading on the issue of damages should subsequent evidence show this figure to be either too high or too low.

WHEREFORE, LEBRON demands the following relief against the ENCARNACION:

- a. Compensatory Damages in an amount to be determined by a jury;
- b. Economic Damages in an amount to be determined by a jury;
- c. Punitive damages in an amount to be determined by a jury;
- d. Mental anguish damages in an amount to be determined by a jury;
- e. Costs and interest and attorney's fees;
- f. Such other and further relief as this Court may deem just and proper.

Dated: Jericho, New York
August 21, 2016

BY: 

ROBERT HILTZIK, ESQ.
Attorney for ASHLEY LEBRON
380 N. Broadway
Penthouse West
Jericho, New York 11753
(516) 308-4674

VERIFICATION

I, ASHLEY LEBRON, declare as follows:

1. I am the Plaintiff in the present case, a citizen of the United States of America, and a resident of the state of New York.
2. I have read the foregoing Complaint and know the contents thereof. As to those matters that I claim to have personal knowledge I believe them to be true. As to matters stated to be alleged upon information and belief, I believe them to be true based upon my personal knowledge and review of documents.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this VERIFIED COMPLAINT concerning myself, my activities and my intentions are to the best of my knowledge true and correct.


ASHLEY LEBRON

SWORN TO BEFORE ME THIS
21ST DAY OF AUGUST, 2016



